

On March 15, 2004 appellant, filed a traumatic injury claim alleging that he was assaulted on March 13, 2004 by unknown assailants while delivering mail. The Office accepted his traumatic injury claim for head and scalp contusion and acute reaction to stress. Appellant returned to full duty, with no restrictions, on June 2, 2004, but stopped working on July 9, 2004.

On April 12, 2005 he filed a claim for compensation beginning March 26, 2005, which the Office developed administratively as a recurrence claim.

Appellant submitted numerous reports from Dr. Roland Jefferson, a treating physician,<sup>1</sup> who treated appellant for post-traumatic stress disorder (PTSD), which he attributed to the accepted work injury. On May 27, 2004 Dr. Jefferson stated that appellant's symptoms of insomnia, startle response and hypervigilance had resolved and that he was highly motivated to return to work. He released appellant to return to full-time employment as of June 1, 2004, without restrictions. In a July 15, 2004 report, Dr. Jefferson opined that appellant was no longer able to function in his job as of July 8, 2004. In an April 30, 2005 report, he opined that appellant's March 26, 2005 recurrence was due to actions of the employing establishment, including: a threat of suspension on the day following the original incident; a "stand-up" speech given to staff warning against confrontations; a postal service investigation of the incident; attempts to interview him at work and at home; assignment to the same position following the accepted incident; and lack of concern for appellant's personal welfare. Dr. Jefferson opined that generally demoralizing circumstances caused a variety of conditions, including cephalgia, startle response, hypervigilance, insomnia, anorexia and impairment of his attention span and concentration.

The record contains an employing establishment investigative memorandum dated March 15, 2004, in which supervisor Carolyn Dean reported that she was unable to locate any witnesses at the scene on the date of the alleged attack. Appellant stated that he was unable to avoid the assault, due to traffic congestion. The memorandum reflects that a "stand-up" talk was given as a preventive action on March 15, 2004 by appellant's manager, who advised all employees to avoid irate customers. In a September 23, 2004 investigative memorandum, inspector Sue Bristow indicated that on the date of the alleged attack, appellant did not call the police to report the assault and refused medical treatment. Appellant reported that he was struck in the face and head by several people in what he believed to be a road-rage event. The investigator stated that he attempted to interview appellant on May 28, 2004. Appellant refused to discuss the reported assault at that time and instructed the investigator to interview him at the employing establishment when he returned to work. He returned to work on June 2, 2004. On July 9, 2004 the investigator attempted to interview appellant at the employing establishment. However, when his supervisor informed appellant that the inspector wanted to talk to him regarding his reported assault, he refused to speak with the investigator and informed his supervisor that he was going home due to stress resulting from the attempted interview.

On May 12, 2005 the Office denied the recurrence claim. The Office found that appellant had raised new employment factors, not previously considered, that were administrative in nature and, therefore, without error or abuse, not compensable. The Office also found that there was no evidence to establish that appellant's current condition was due to his accepted work injury.

---

<sup>1</sup> Dr. Jefferson's letterhead reflects that he is a forensic psychiatrist; however, his credentials cannot be verified.

On May 8, 2006 appellant requested reconsideration. He submitted a September 30, 2005 report, from Dr. Jefferson in which he stated that appellant experienced PTSD as a result of his supervisor's actions. Dr. Jefferson contended that appellant should have been assigned to a different route and station and that he was being harassed, belittled and used as a scapegoat by management. He argued that postal inspectors diminished and trivialized the effects of appellant's assault by waiting four months to investigate the incident and that he was retraumatized by their attempt to interview him. Dr. Jefferson noted appellant's claim that he was improperly threatened with a seven-day suspension for fighting. Finally, he opined that appellant's supervisor acted abusively when he gave a speech in front of coworkers on avoiding confrontations with the public. Dr. Jefferson stated that appellant's reaction to his supervisor's behavior was consistent with the aggravated psychological symptoms of PTSD brought on by the accepted assault.

By decision dated August 10, 2006, the Office denied modification of its earlier decision, finding that appellant had failed to establish that he had sustained a recurrence of disability.

At the oral argument, appellant contended that he suffered a recurrence of disability as of March 26, 2005. He alleged that his emotional condition resulted from both the accepted March 13, 2004 assault and actions taken by his employer following his return to work. Appellant indicated that he found his supervisor's actions "hurtful." He stated his belief that the "stand-up" talk was aimed at him and that he was blamed for an incident that was not his fault. Appellant felt that the inspector's act of visiting him at his home showed disrespect; that the investigation was inappropriate; and that the employing establishment did not care about him, but only wanted him to go back to work. He acknowledged that, on the date of the alleged attack, the police were not summoned and he continued to deliver his route after the assault.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 10.5(x) of the Office's regulation defines "recurrence of disability" as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness, without an intervening injury or new exposure to the work environment that caused the illness.<sup>2</sup> Therefore, the Board has held that, in order to establish a claim for a recurrence of disability, appellant must establish that he suffered a spontaneous material change in the employment-related condition without an intervening injury.<sup>3</sup>

Appellant has the burden of establishing that he sustained a recurrence of a medical condition<sup>4</sup> that is causally related to his accepted employment injury. To meet his burden, appellant must furnish medical evidence from a physician who, on the basis of a complete and

---

<sup>2</sup> 20 C.F.R. § 10.5(x) (2002). See *Carlos A. Marrero*, 50 ECAB 117 (1998).

<sup>3</sup> *Carlos A. Marrero*, *supra* note 2.

<sup>4</sup> "Recurrence of medical condition" means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment. 20 C.F.R. § 10.5(y) (2002).

accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale.<sup>5</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

In the present case, appellant alleged that he sustained a recurrence of his prior accepted emotional condition as a result of a number of employment incidents and conditions. However, appellant specifically asserted that his current PTSD was caused in part by new incidents, occurring after his return to unrestricted duty following his initially accepted condition. These are new factors which constitute new exposure to the work environment subsequent to the accepted employment incident that caused the claimed illness. Since alleged intervening factors were responsible, appellant did not, by definition, sustain a recurrence of disability and the Office properly denied his claim for a recurrence of disability due to the accepted March 13, 2004 employment injury.

### **LEGAL PRECEDENT -- ISSUE 2**

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to his or her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act.<sup>7</sup> The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of a claimant's work or his fear and anxiety regarding his ability to carry out his duties.<sup>8</sup> By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>9</sup> Moreover, although administrative and personnel matters are generally related to employment, they are functions of the employer and not duties of the employee. Thus, the Board has held that reactions to actions taken in an administrative capacity are not

---

<sup>5</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>6</sup> *Albert C. Brown*, 52 ECAB 152 (2000).

<sup>7</sup> 5 U.S.C. §§ 8101-8193.

<sup>8</sup> *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>9</sup> See *Peter D. Butt, Jr.*, 56 ECAB \_\_\_\_ (Docket No. 04-1255, issued October 13, 2004). See also *Ronald K. Jablanski*, 56 ECAB \_\_\_\_ (Docket No. 05-482, issued July 13, 2005); *Barbara J. Latham*, 53 ECAB 316 (2002).

compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.<sup>10</sup>

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment, which may be considered by a physician when providing an opinion on causal relationship and which are not deemed factors of employment and may not be considered. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.<sup>11</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.<sup>12</sup> As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim, but rather, must be corroborated by the evidence.<sup>13</sup>

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced, which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>14</sup>

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that an emotional condition was caused or adversely affected by his employment.<sup>15</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>16</sup> Mere perceptions and feelings of harassment will not support an award of compensation.<sup>17</sup>

---

<sup>10</sup> See *Charles D. Edwards*, 55 ECAB 258 (2004); see also *Ernest J. Malagrida*, 51 ECAB 287, 288 (2000).

<sup>11</sup> *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>12</sup> See *Charles D. Edwards*, *supra* note 10.

<sup>13</sup> *Charles E. McAndrews*, 55 ECAB 711 (2004); see also *Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

<sup>14</sup> *James E. Norris*, 52 ECAB 93 (1999).

<sup>15</sup> See *Charles D. Edwards*, *supra* note 10.

<sup>16</sup> See *Ronald K. Jablanski*, *supra* note 9; *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>17</sup> *Beverly R. Jones*, 55 ECAB 411 (2004).

## ANALYSIS -- ISSUE 2

Appellant alleged that he experienced PTSD as a result of a number of employment incidents and conditions that occurred after his return to unrestricted duty on June 2, 2004. The Office found that he had not established any compensable factors of employment under the terms of the Act.

Appellant has not attributed his emotional condition to the performance of his regular duties or to any special work requirement arising from his employment duties under *Cutler*,<sup>18</sup> nor has appellant implicated his workload as having caused or contributed to his emotional condition. Rather, he has alleged harassment on the part of the employing establishment. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.<sup>19</sup> However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act.<sup>20</sup> In the present case, appellant has not submitted sufficient evidence to establish his claim.<sup>21</sup> He alleged generally that management lacked concern for his personal welfare and that he was harassed, belittled and used as a scapegoat. Appellant submitted no corroborating evidence, such as witness statements, to substantiate his allegations. His general allegations that he was harassed by management are insufficient to establish that harassment did, in fact, occur. Thus, appellant has not established a compensable employment factor under the Act with respect to these above-described allegations.

The Board finds that appellant's allegations that his supervisor threatened him with a seven-day suspension on the day following the original incident; a "stand-up" speech was given to staff warning against confrontations; a postal service investigation of the incident was improperly conducted; an attempt was made to interview him at work; and that he was improperly assigned to the same position following the accepted incident, relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.<sup>22</sup> Although the assignment of work duties, training, disciplinary actions and the monitoring of work activities are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>23</sup>

---

<sup>18</sup> See *Lillian Cutler*, *supra* note 8.

<sup>19</sup> See *Lori A. Facey*, 55 ECAB 217 (2004). See also *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>20</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>21</sup> See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>22</sup> See *Lori A. Facey*, *supra* note 20. See also *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

<sup>23</sup> *Id.*

However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>24</sup>

In this case, appellant has not submitted sufficient evidence to show that the employing establishment committed error or abuse with respect to these matters. The record reflects that on May 27, 2004, Dr. Jefferson stated that appellant's symptoms of insomnia, startle response and hypervigilance had resolved and that he was highly motivated to return to work. He released appellant to return to full-time employment as of June 1, 2004, without restrictions. The Board finds that assigning appellant to his date-of-injury job was reasonable under the circumstances. Moreover, appellant's frustration from not being permitted to work in a particular environment is not a compensable factor under the Act.<sup>25</sup>

The record also shows that, following the alleged March 13, 2004 incident, a "stand-up" talk was given by appellant's supervisor, who advised all employees to avoid irate customers as a preventive action. The Board finds that this administrative act was reasonable and responsible under the circumstances, as it provided corrective instruction in response to appellant's assault. The Board has recognized the compensability of verbal altercations or abuse in certain circumstances; however, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.<sup>26</sup> Appellant's description of the "stand-up" speech cannot be characterized as either a verbal altercation or abuse. He has not identified any words, actions or gestures used by his supervisor to support abuse on her part.

Appellant alleged that a postal service investigation of the incident was improperly conducted and that he was stressed by attempts that was made to interview him at home and at work. The Board finds that the employing establishment's actions with regard to its investigation of the alleged incident did not constitute error or abuse. Rather, the employing establishment had a responsibility to investigate the circumstances surrounding the assault and acted appropriately. Appellant was allegedly attacked without provocation, while in his official vehicle, on his daily route. However, he was unable to substantiate the facts alleged. Appellant did not file a police report or identify witnesses; nor did he seek medical treatment immediately. In fact, he completed his route following the alleged assault. In order to verify the alleged events, the employing establishment was required to perform an investigation. The Board finds that the inspector's attempts to interview appellant were reasonable and warranted. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant generally indicated that the actions of his supervisor and other employees were "hurtful," disrespectful and punitive. However, under the circumstances of this case, the Board

---

<sup>24</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>25</sup> See *Cyndia R. Harrill*, 55 ECAB 522 (2004).

<sup>26</sup> See *Charles D. Edwards*, *supra* note 10.

finds that appellant's emotional reaction must be considered self-generated, in that it resulted from his perceptions regarding these actions.<sup>27</sup>

For the foregoing reasons, the Board finds that appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.<sup>28</sup>

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof in establishing that on March 26, 2005 he sustained a recurrence of disability that was causally related to his accepted injury. The Board further finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 10, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 2007  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>27</sup> See *David S. Lee*, 56 ECAB \_\_\_\_ (Docket No. 04-2133, issued June 20, 2005).

<sup>28</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. See *Margaret S. Krzycki*, *supra* note 11.